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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,536	10/24/2003	Jeff Jelinek	87359.1940	6875

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BAKER & HOSTETLER LLP  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
WASHINGTON, DC 20036

EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/691,536

Applicant(s)

JELINEK, JEFF

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

### Claims 1-9: Rejected under 35 U.S.C. 112, second paragraph

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are vague and indefinite. For example, in claim 1, line 3, the phrase "at least at times" causes the claim to be indefinite since it is unclear when, or by what means, the conduit communicates with the burner.

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

*The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).*

**Claims 1-20: Rejected under 35 U.S.C. 102(b)**

Claims 1-3, 8-11 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 10-148307.

JP 10-148307 shows and discloses (see the English language abstract) a system for a hydrocarbon fired burner comprising:

- an exhaust conduit (5) in fluid communication with a burner (3);
- a recirculation conduit (11) configured to provide at least at times fluid communication between the exhaust conduit and burner inlet;
- an adjustable valve (16) configured to selectively permit the recirculation conduit to provide fluid communication between the exhaust conduit and the burner inlet;
- an NOx sensor (22) located upstream from the recirculation conduit in the exhaust conduit (5), and
- a system controller (24) connected to the NOx sensor and configured to monitor an amount of NOx emissions in the exhaust conduit,
- the system controller is also connected to the valve to adjust the valve.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3-7, 12-16 and 20: Rejected under 35 U.S.C. 103(a)**

Claims 3-7, 12-16 and 20 are rejected under 35 U.S.C. 103(a) as being obvious over JP 10-148307.

JP 10-148307 shows and discloses (see the English language abstract) a system for a hydrocarbon fired burner comprising:

- an exhaust conduit (5) in fluid communication with a burner (3);
- a recirculation conduit (11) configured to provide at least at times fluid communication between the exhaust conduit and burner inlet;
- an adjustable valve (16) configured to selectively permit the recirculation conduit to provide fluid communication between the exhaust conduit and the burner inlet;
- an NOx sensor (22) located upstream from the recirculation conduit in the exhaust conduit (5), and
- a system controller (24) connected to the NOx sensor and configured to monitor an amount of NOx emissions in the exhaust conduit,
- the system controller is also connected to the valve to adjust the valve.

However, JP 10-148307 does not disclose:

- means to shut down burners when the unacceptable operating parameters are detected:

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- solenoid valves as fluid control means;
- a digital microprocessor with a memory and stored operating values as a system controller:
- system control means arranged to activate an alarm when system parameters are at an unacceptable levels to notify maintenance personnel.

Official Notice is taken that it is well known to:

- shut down burners when the unacceptable operating parameters are detected in order to prevent unsafe or damaging burner operation:
- use solenoid valves as fluid control means;
- use a microprocessor with a memory and stored operating values as a system controller:
- system control means arranged to activate an alarm when system parameters are at a unacceptable levels to notify maintenance personnel.

In regard to claims 3-7, 12-16 and 20, in view of that which is well known and for the purpose of preventing unsafe or damaging burner operation and to provide suitable means for operating the control system, it would have been obvious to a person having ordinary skill in the art to provide the various system components set forth in the claims.

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**Conclusion**

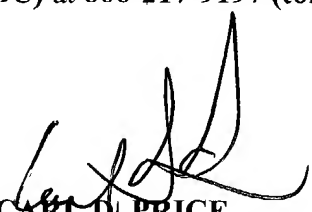
See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is **703-308-1953**. The examiner can normally be reached on Monday through Friday between **6:30am-3:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on **703-308-1935**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see **<http://pair-direct.uspto.gov>**. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at **866-217-9197 (toll-free)**.

  
**CARL D. PRICE**  
**Primary Examiner**  
**Art Unit 3749**